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CHARLES ELMORE CROPLEY
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In the Supreme Court of the United States.

OCTOBER TERM, 1927

No. [redacted]

5, Original

THE STATE OF COLORADO,
Complainant,

vs.

THE STATE OF KANSAS AND THE FINNEY COUNTY WATER USERS' ASSOCIATION, A CORPORATION,
Defendants.

MOTION FOR LEAVE TO FILE ORIGINAL BILL OF COMPLAINT IN EQUITY AND ORIGINAL BILL OF COMPLAINT

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ORIGINAL

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT IN EQUITY

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of Colorado, a sovereign State of the Union, appearing by William L. Boatright, its Attorney General, upon direction of his Excellency, William H. Adams, Governor of the State of Colorado, respectfully moves for leave to file as an original cause in this court its Bill of Complaint in Equity against the State of Kansas and The Finney County Water Users' Association, a private corporation, a citizen of Kansas, which Bill of Complaint is submitted herewith.

The State of Colorado respectfully shows that in an original proceeding in this Court, commenced by the sovereign State of Kansas on or about May 20, 1901 and concluded on or about May 13, 1907, and reported under the name *Kansas vs. Colorado*, in 185 United States Reports, 125, and 206 United States Reports, 46, this Supreme Court considered and adjudicated the claims of the State of Kansas and of the State of Colorado and their respective citizens and inhabitants to the use and flow of the waters of the Arkansas River, a stream originating in the State of Colorado and flowing into and through the State of Kansas; that in the final decree in said cause this Supreme Court determined that the use and diversion of the waters of the Arkansas River to the extent then established and practiced by the State of Colorado did not exceed the equitable limitations on the exercise of sovereignty by the State of Colorado on the said river, and dismissed the bill of complaint of the State of Kansas, and held that if thereafter the State of Colorado, its citizens and inhabitants, should increase the diversion and use of the waters of said river so materially that the substantial interests of Kansas were being injured, and the equitable apportionment of benefits between the States was destroyed, that the State of Kansas might reinstitute proceedings against the State of Colorado. In spite of the said adjudication, suits by private individuals, and particularly by The Finney County Water Users' Association, a corporation of Kansas, have been instituted against individuals and corporations in Colorado without impleading or attempting to implead either the State of Colorado or the State of Kansas, and these private suits attempt to overturn and will, if continued, overturn and render nugatory the above mentioned adjudication between the States, defeat the government ownership and control by the State of Colorado of its streams and the use of the waters thereof, and terminate the orderly and proper administration and policy of the State of Colorado over the waters of the Arkansas River within its own boundaries. The State

of Colorado now prays leave to file its Bill in Equity in the nature principally of a bill of peace, offering to do justice to the State of Kansas whenever said State shall desire to complain in this Court of the actions of Colorado, its citizens and inhabitants, but praying that the Court may, by reasons of facts and doctrines fully set forth in the bill, prevent the continuance of the private litigation which, as the State of Colorado believes and alleges, will, if continued, destroy its sovereignty, prevent the economic development of irrigation on the Arkansas River both in Colorado and Kansas, prevent the State of Colorado from carrying out a policy of governmental control and ownership of the waters of the Arkansas River which is necessary for the development of agriculture and civilization itself, and rob the State of Colorado, its citizens and inhabitants, of the fruits of the litigation in the above-mentioned cause of *Kansas vs. Colorado.*

WHEREFORE, the State of Colorado prays leave to file its Original Bill of Complaint as above stated.

Respectfully submitted,

THE STATE OF COLORADO,
By WILLIAM L. BOATRIGHT,
Attorney General of the
State of Colorado.

RALPH L. CARR,
Assistant Attorney General,
Solicitors for Complainant.

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ORIGINAL

BILL OF COMPLAINT IN EQUITY

The State of Colorado, a State of the Union, appearing in its sovereign capacity by its Attorney General upon direction of its Governor, by leave of Court files this, its Bill of Complaint, and respectfully sets forth:

FIRST

The parties hereto are your Complainant, the State of Colorado, a State of the Union admitted to and exercising equal sovereignty with the original and all other States of the Union, and the defendants, the State of Kansas, a like

sovereign and equal State of the Union, and The Finney County Water Users' Association, a corporation.

SECOND

The Finney County Water Users' Association is a corporation duly organized and existing under the laws of the State of Kansas, incorporated primarily for the purpose of owning, maintaining and operating an irrigation canal, taking water from the Arkansas River, in the State of Kansas, for the purpose of irrigating lands in said state. Its offices and place of business are in the State of Kansas, it carries on business wholly within the said state, and it is a citizen; resident and inhabitant of the State of Kansas and not of any other state.

THIRD

The Arkansas River is a non-navigable stream rising among the higher ranges of the Rocky Mountains, near the center of the State of Colorado, flowing thence southeasterly and easterly through the central portion and the southern portion of Colorado for a distance of about three hundred miles to the boundary between Colorado and Kansas, and thence for a distance of about two hundred miles through southwestern and south central Kansas, leaving that state at its southerly boundary to enter the State of Oklahoma. It flows thence through Oklahoma and Arkansas for several hundred miles before reaching the Mississippi River. Throughout its course in Colorado, the main stream of the Arkansas River traverses an arid country, consisting first of mountain valleys along which considerable agricultural crops are grown by the process of irrigation, and thereafter for about two hundred miles, consisting of the Great Plains, across which the river flows in a valley almost entirely of shifting sand, the slopes of which are scarcely distinguishable from the flat contours of the open prairie. The river is joined in its course in Colorado by numerous small mountain tributaries and on the plains by several large floodwater

tributaries deriving their water from the slopes of the Rocky Mountains and the drainage from great areas of the relatively level plains. Throughout the course of the river and its tributaries in Colorado the rainfall is insufficient to support agriculture without the aid of irrigation; there are no material sources for water either in wells, or subterranean flows which are worthy of consideration, and, therefore, in addition to the demands for agriculture, several considerable cities and a great number of towns, villages and hamlets are dependent upon the water flowing in the channel of the Arkansas River for domestic and manufacturing uses, fire protection, and all of the customary requirements of a human population. The annual precipitation, in the form of snow and rain in those lands in Colorado bordering the river and its tributaries which are susceptible of supporting the homes and industries of men, gradually increases from a minimum of about ten inches per annum, in the regions where the river first ceases to be a mountain stream and becomes available for agricultural and domestic use, to about fifteen inches at the eastern border of Colorado, the precipitation on the whole throughout the district traversed by the river and its tributaries tending gradually to increase as the river approaches the Kansas border.

The Arkansas River and its tributaries constitute one of the principal foundations for human population, agriculture, industry, life, prosperity and happiness within the borders of Colorado, and a large part of the present population of the state is dependent upon the use of the waters flowing in the said stream, and to a lesser extent in its tributaries, for carrying on the arts and industries of life, and for maintaining existence itself. Fourteen counties in the State of Colorado, namely, Lake, Chaffee, Custer, Fremont, Pueblo, El Paso, Huerfano, Otero, Crowley, Las Animas, Baca, Kiowa, Prowers and Bent (many of them of vast extent) are dependent upon the Arkansas River and its tributaries within the state for the fundamental requirements of life, and

more than 640,000 acres devoted to agriculture are and for many years have been entirely dependent upon the Arkansas River and its tributaries for irrigation water, and would without its continued use and availability revert to deserted prairies within a few months. The cities of Pueblo with a population of more than 50,000 people, Colorado Springs with a population of more than 30,000 people, Trinidad with a population of more than 12,000 people, Canon City, Salida and La Junta, with a population of more than 5,000 each, Rocky Ford and Walsenburg with a population of more than 4,000 people each, Lamar with a population of more than 3,000 people, and a large number of smaller cities, towns and settlements, with industries such as the great iron and steel plants at Pueblo, a number of important factories for the manufacture of sugar from beets, alfalfa mills, flour mills, electric light plants, and a great variety of other manufacturing enterprises, are dependent for all the demands for water incident to urban and suburban life and prosperity upon water taken from the natural discharge of the Arkansas River and its tributaries. Approximately 150,000 people live in the cities, towns and villages of this district, and an additional 50,000 people are located outside of cities, towns and villages on farms and agricultural lands. More than $20,000,000 has been expended in the construction of ditches and canals for agricultural purposes, and probably as much more in the construction of municipal and manufacturing facilities for the diversion and use of water by cities, towns, and the industries located within them. Under the prevailing state of the arts for the use and conservation of water and the conditions of commerce justifying the same, the territory in Colorado tributary to the Arkansas River showed a steady increase in population and development until about the year 1900, since which time there has been no substantial alteration in the quantity of water beneficially applied within the state, although the permanence of the settlements, the population dependent upon the river, and the industries and public and private institutions based thereon, by a gradual increase

of knowledge, stabilization of conditions and the other elements incident to age and permanency of occupation, have been substantially increased. Great numbers of public institutions, schools, colleges, county and municipal buildings and enterprises, penal and charitable institutions, have been gradually established in the territory supplied by the river and its tributaries by the authority of this sovereign state and the expenditure of large sums of public moneys raised by taxation. Several railroads, including a substantial part of the so-called Santa Fe System, Denver and Rio Grande Western System, the Missouri Pacific System and Colorado and Southern System have for a generation past served this district and are materially dependent for success upon the flow of the Arkansas River and its tributaries.

FOURTH

After entering the State of Kansas the river travels for substantially a hundred miles through a district in which the rainfall, in a gradually increasing degree towards the east, becomes more sufficient for the growth of crops and the support of settlements without the aid of irrigation, but for about this distance irrigation has been practiced more or less spasmodically, and practically 40,000 acres of agricultural land did prior to 1900 derive and since continue to derive water from the river and its tributaries within the State of Kansas for supplemental use in ordinary years, and principal use in years of unusual drouth, but by reason of natural conditions the State of Kansas has not been required to develop and has not developed irrigation institutions, irrigation structures or irrigation law and practices at all comparable with those developed in Colorado, and the riparian doctrine (as was asserted by Kansas and found by the Supreme Court in the case of Kansas vs. Colorado, hereinafter mentioned) prevails throughout the State of Kansas.

FIFTH

The State of Colorado has been conscious from its earli-

est territorial days prior to its admission as a state in the year 1876, that permanent human population within its borders was dependent for existence itself upon a scientific use of its water supply and that such use must depend upon a development of legal institutions for the government, control and conservation of the water of its flowing streams throughout the state. In virtue of its sovereignty and beginning with its first legal acts as a sovereign state in that year, it adopted and has since hitherto developed and carried out an express policy of state ownership, jurisdiction, control and administration of all the waters of the state, including particularly the waters of the Arkansas River and its tributaries. Beginning with the year 1876, and steadily since that time, the State, by reason of its necessities, has progressed with its development of this doctrine to a greater degree than any other state in the Union, and today and from its admission to the Union, the State, by its Constitution and laws, has treated all of the flowing water in the state as the property of the state itself, permitting its citizens to acquire only usufructuary rights subordinate to the state ownership, given for the time being to private agencies but subject and subservient always to the dominant will of the State. The State has through an elaborate and ever-improving code of laws and a great series of administrative officials controlled and administered during every hour and in every detail the diversion and use of waters from the Arkansas River and its tributaries. State officials, acting under a voluminous code of laws, enacted to meet the peculiar necessities of its territory, control, inspect, forbid and permit the construction of reservoirs, dams, head-gates, and all other devices for the diversion and use of water, measure and rate the same, and by daily and hourly direction distribute all of the waters of the Arkansas River pursuant to claims which must first be established by judicial proceedings conducted at State expense. The State of Colorado is responsible for and assumes responsibility in its sovereign capacity for the use, diversion

and disposition of the waters of the Arkansas River and its tributaries. It has by numerous acts of law and policy, supported by the interpretations of its courts, claimed the right to use within its borders and to distribute all of the waters originating and flowing therein to such of its citizens and inhabitants as it chose to select, without regard to the claims of the inhabitants or citizens of any other state, including the State of Kansas, and subject only to such limitations as this Honorable Court might determine to exist between this State as a whole and other sovereign states as a whole, or such compacts and agreements, if any, as might be entered into by this State as a whole and in its sovereign capacity with other states as a whole and in their sovereign capacities, with consent of the Congress.

SIXTH

By the Constitution of Colorado, adopted in 1876 and still remaining the law of the State, it is provided by Article XVI, Section 5, as follows:

> "The water of every natural stream, not heretofore appropriated, within the State of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided."

By Section 7 of Article XVI the use of water is declared to be *publici juris*, and the right of eminent domain granted therefor, as follows:

> "All persons and corporations shall have a right-of-way across public, private and corporate lands for the construction of ditches, canals and flumes for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, for mining and manufacturing purposes, and for drainage, upon payment of just compensation."

These provisions have been frequently interpreted by the courts of the State as declaratory of the public policy that the waters of the streams of the State belong to and are controlled and properly administered by the State in its sovereign capacity as a matter of public and governmental activity. Thus, in the case of *Stockman vs. Leddy*, 55 Colorado Reports 24, in 1912, the Supreme Court of Colorado, in upholding legislative acts appropriating public money for the protection and defense of its sovereignty in the natural streams, said (p. 29):

> "The entire volume of these streams is therefore made up of rains and snows that fall upon the surface of lands included within the exterior lines of this state and of springs which issue from the earth within the same area. Such being the peculiar conditions, the state was justified in asserting its ownership of all the natural streams within its boundaries. When Colorado was admitted into the Union with such a constitution, the federal government, through its law-making and executive departments, thereby recognized and confirmed such right of ownership as belonging to the state in its sovereign capacity. We therefore find it to be not only that our state constitution and pertinent statutes, but the decisions of the courts and duly announced public policy, all are in accord on the proposition to which the federal government has, as we have just shown, given its consent that the waters of the natural streams of this state belong to the people, to the state, in its sovereign capacity, and that its right to their distribution and control within its borders is free from any interference by any other sovereignty. * * * * We find nothing in United States v. Rio Grande Irrigation Co., 174 U. S. 690, 19 Sup. Ct. 770, 43 L. Ed. 1136, Kansas v. Colorado, 206 U. S. 46, 27 Sup. Ct. 655, 51 L. Ed. 956, Rickey L. & C. Co. v. Miller & Lux, 218 U. S. 258, 31 Sup. Ct. 11, 54 L. Ed. 1032, Bean v. Morris, 221 U. S. 485, 31 Sup. Ct.

703, 55 L. Ed. 821, or in any other case that has been brought to our attention, which militates against our conclusion, when these cases are considered, as they should be, in connection with the facts on which they were determined."

By other legislation the state has likewise forbidden the recognition of any private claims for the use of water arising within Colorado, for irrigation or other purposes, outside the state and has assumed responsibility in its sovereign capacity for such obligations, if any, as the state bore to other sovereignties, recognizing alone the procedure provided by the Constitution of the United States for the settlement of any supposed claims against the State of Colorado by compact between states or by the determination of the Supreme Court of the United States upon the petition of another sovereign power. Accordingly at practically every session of the legislature for a decade past public moneys have been appropriated for the defense of the state's sovereign rights in its streams.

By a legislative act of 1917 (Session Laws, 1917, p. 539, Sections 1 and 2; Compiled Laws, 1921, Sections 1618 and 1619) the State expressly forbade "any person, corporation or association to divert, carry or transport by ditches, canals, pipes, conduits, natural streams or water courses, the waters of any springs, reservoir, lake, pond, creek, river, stream or water course of this state into any other state for use therein"; recited the policy of the State towards a unit control of its water resources and instructed its administrative officials entrusted with the diversion and supervision of water to prevent the use of its waters in any other state, and directed its Attorney General, by suit, to cause the courts to enjoin any such attempted assertion within this state of the right to use its waters outside of the state. This statute was an adoption by Colorado of the Act of the State of New Jersey (New Jersey Laws of 1905, chapter 238, p. 461), theretofore construed

and considered by the Court of Errors and Appeals of New Jersey (70 New Jersey Equity, 695) and considered and upheld by this Honorable Supreme Court in a cause entitled *Hudson Water Co. vs. McCarter* (209 United States 349), and its adoption by Colorado carried into the laws of Colorado the judicial construction and adjudication that the act was a valid, proper and constitutional act and expression of policy by a sovereign state. Pursuant to the same policy the courts of Colorado have declared that the special statutory proceedings, whereby the rights of private claimants to the usufruct in waters of streams are determined and whereby the administrative officials controlling diversions are given instructions to recognize priorities by distribution, forbid by the rules of public policy the recognition by the courts or administrative officials of any claims to or use of water outside the boundaries of the state. Thus as early as 1900 the Supreme Court of Colorado, in a case entitled, *Lamson et al. vs. Vailes et al.*, 27 Colorado Reports 201, held that the owners of an irrigation ditch which was so constructed as to divert water from the La Plata River within the State of Colorado near the state boundary between Colorado and New Mexico, who thus proposed to carry the water so diverted across the state line for the irrigation of lands in New Mexico, were not entitled to recognition by the courts of Colorado administering the special adjudication proceedings on the basis of which the water officials distributed the water in the natural streams of the state, and could not procure a decree entitling them to recognition by and participation in the administrative machinery of the state. The inevitable consequence of this ruling was to require the appropriators claiming the right to divert water under the said ditch to secure recognition, if at all, through the action, motion and rights of the sovereign State of New Mexico, the individual claimants being mere beneficiaries of such quantum of water, if any, as might be allocated to New Mexico by equitable consideration of the relative rights of the two sovereign states

in respect to the La Plata River. The said claimants remained without recognition until a compact was in the year 1923 d. v and with consent of the Congress entered into by the sov· ign states of Colorado and New Mexico providing for the ·posal of the waters of the La Plata River.

Be ing with the year 1879, by an elaborate series of statutes ·e State has developed a procedure for the examination, investigation and determination of the usufructuary rights of all public corporations, public and private institutions, and private individuals in the natural streams of the state whereby, from time to time, at the expense of the public, certain courts, in a proceeding originated in Colorado, and *sui generis,* review and announce the various claims which are entitled to recognition by the water officials of the state in the distribution of water. (Compiled Laws of Colorado, 1921, Chapter 35, Part VIII, Sections 1752 to 1802.) These proceedings result in decrees which are transmitted to the numerous officers charged with the administration of the streams, and the officers are forbidden to distribute water to any claimant whose rights shall not have been so determined and recognized. (Compiled Laws, Colorado, 1921, Sections 1762, 1767, 1784, 1788 and 1798.) By a further series of acts a state engineer is established who "shall have general supervisory control over the public waters of the state" (Compiled Laws, 1921, Section 1804), and who is given supervision over the subordinate division engineers and water commissioners. (Compiled Laws, 1921, Section 1807.) The State is divided into six water divisions of which the Arkansas River and its tributaries constitute substantially Division No. 2 (Compiled Laws, 1921, Section 1823), and a division engineer (Compiled Laws, 1921, Sections 1830, 1832) is given general jurisdiction to execute the distribution of water in his respective division. Next subordinate to the division engineer are water commissioners (Compiled Laws, 1921, Section 1838), each with a district assigned to him, whose duty it is to direc ·nd control in every detail the

opening and closing of all the headgates in his district. The area supplied by the Arkansas River, by these and other statutes (Chapter 35, Compiled Laws, 1921) is divided into twelve districts, being Districts Nos. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23 and 67, in each one of which a water commissioner, under the supervision of the division engineer and in turn of the state engineer, each day permits, forbids and/or regulates all diversions of water for agricultural, domestic, municipal, manufacturing or other uses, according to the stage of the stream, the relative demands for water, and the several recognized appropriations certified to him by the courts. No person desiring water can divert the same except, if, as and when authorized by the Water Commissioner, and in both theory and practice no water is diverted except by the order and direction of the public officials in control of the stream. The remedy provided for a person aggrieved by the acts of a commissioner is an appeal through administrative channels from the commissioner to the Division Engineer and in turn from him to the State Engineer and, if necessary, the courts. In theory and practice the whole series of administrative officers are in hourly contact by telephone and similar methods with all persons diverting water, and know from hour to hour by means of reports and automatic recording registers on the streams and headgates the immediate operating conditions and stream flow. This system, originating in the peculiar necessity of the State, has been developed through innumerable steps of statutory enactment, repeal and amendment at every meeting of the General Assembly of Colorado since 1876, and by innumerable administrative regulations, devices, experiments and experiences. It is still in a state of evolution and improvement, and is and will continue to be a developing policy, art and science.

SEVENTH

Under said system of ownership and control of the streams by the State in its sovereign capacity the Arkansas

River and its tributaries for a distance of more than 250 miles on the main stream and an additional aggregate of at least 250 miles on its tributaries in Colorado is continuously operated throughout the year under a complex, complicated and unbroken single system and as a single unit. The waters are divided between irrigation, domestic, manufacturing, and other uses by state officials who recognize no priorities or claims to priority except those officially listed and adjudicated as to relative time of appropriation, amounts of appropriation, uses, and location of headgates, all applied to the stage of the river, climatic conditions such as recent rains, consideration of the varying demands for crops, and the stage of the river flow. More than four thousand separate usufructuary rights are recognized and administered on the Arkansas River and its tributaries. The priorities are numbered in consecutive order within each water district, and the water districts are in turn consolidated into a single list of priorities applicable to the whole river, and diversions are permitted or forbidden, in whole or in part, from hour to hour, on the basis of a vast mass of governmental experience and contemporaneous observation throughout the drainage area of the Arkansas River. Numbers of ditches have acquired (in the process of bringing about a more economic use of the water) by consolidation and purchase, authorized by the courts of the state under principles of sound public policy, more than one and frequently a considerable number of different usufructuary rights, varying in date and quantity and available at varying times and in varying amounts under the complex system of governmental control. Every usufructuary right is limited in quantity to the necessities of the place and time and by considerations of economic utilization, and the right to divert water depends upon an immediate and intimate knowledge of time and place of use at and during every occasion that water is diverted, and requires the constant exercise of human discretion. Moreover, upon discontinuance of use,

the usufructuary privilege vanishes on principles of abandonment, and under special proceedings provided therefor the right is cancelled on consideration of the special facts surrounding it, and the amount of water formerly diverted reverts to the common fund of the sovereign. Alterations in place of diversion, use, time or quantity are permitted only after special judicial proceedings in the courts of the state whereby, if the public policy and the interest of the state (the State being always a party thereto) permit, instructions are given the administrative officers to recognize such changes in the relations of the parties entitled to their consideration. Under this process a uniform use, with a maximum economy and consideration of the public welfare, is maintained, and any interruption of the process would effect the utmost confusion, come into collision with many express provisions of the laws of this sovereign state, and produce the most serious public consequences throughout the great drainage area of the Arkansas River and disaster to the general welfare of the citizens and inhabitants of this state. The claims of the sovereign State of Kansas, if any she has, should and must be asserted by such sovereign state as such against the sovereign State of Colorado as such, and any determination that any irrigator or other claimant in Kansas should be entitled to an adjudication and determination of some supposed individual claim against an individual appropriator or individual appropriators in Colorado would result in the destruction of the governmental system maintained by your complainant, would run into collision with numerous express statutory provisions binding upon the officials of the State of Colorado, would disrupt the whole governmental system, and would be impossible of intelligent or even lawful administration and would perhaps produce public disorder. The propriety, political wisdom and economic necessity of maintaining and dealing with state rights in the interstate streams as a whole between the states only is recognized not only by the decisions of this Honorable Court in dealing with the con-

troversy between Kansas and Colorado hereinafter referred to, but also the controversy between Wyoming and Colorado recently before this Court, and also by the fact that the Western States affected by this problem (though none so acutely as Colorado) have by numerous compacts such as those between Colorado and Nebraska in regard to the South Platte River, between Colorado and New Mexico in regard to the La Plata River, and the pending compacts between the seven states regarding the Colorado River now undergoing laborious negotiation, determined to treat the states as units and on no other basis for the equitable allocation of the benefits of the natural resources which are common to them. There are likewise compacts in process of negotiation between Colorado, Nebraska and Wyoming on the North Platte River, Colorado and New Mexico on the Rio Grande, between various states on the Columbia River and (as hereinafter set forth) between Colorado and Kansas regarding the waters of the Arkansas River.

The recognition of the fundamental principles of ownership, control and administration of the waters of the streams by the States in their sovereign capacities, in conformity with local necessities, and for the general welfare of each of the States, and with administrative rules and statutes varying according to such local necessities and responsive only to the sovereign will of the States in which the use of the natural element is essential to the very existence of the State and its people, and free from claims of foreign servitude save only such as may be fixed by compacts between the states or by decision of this Honorable Court in suits between the sovereign states, not only comports with the fundamental principles of our Federal union of states equal in powers and in all other respects, but likewise comports with human experience in securing the maximum benefits from the use of this fleeting natural element as typified in the experience in the State of Colorado with its local administrative system. The principles of local government which are inherent in all American

theory and practice, and the principles of local administration, are typified in the development of water administration thus evolved by a long series of practical experiments. There are immense geographical variances in location between individual users of water in Kansas and many of the principal individual priorities in Colorado, between whom a conflict might be conveniently sought, amounting to a difference between them of hundreds of miles of river channel in isolated mountain gorges or on the open prairie. The administration of relative usufructuary rights involves the consideration also of the fact that the water flows through different climatic zones subject to varying conditions of rainfall, heat and loss of water under meteorological occasions which vary both the need for water and the actual supply of water available from day to day and from hour to hour. Such factors render imperative the settlement of these matters between sovereign states and not between individuals.

EIGHTH

On or about May 20, 1901, upon leave of court, the sovereign State of Kansas filed in this Honorable Court an original bill of complaint in equity against the State of Colorado whereby it sought, in its sovereign capacity as *parens patriæ* of its citizens and inhabitants using the waters of the Arkansas River for irrigation and other purposes, to prevent the State of Colorado, in its sovereign capacity and as *parens patriæ* and representative of all its citizens and inhabitants also, from permitting the diversion and use of the waters of the Arkansas River and its tributaries within the State of Colorado and thereby in any respect depleting, diminishing or affecting the flow of the Arkansas River as it had always flowed into and across the State of Kansas. The State of Colorado duly appeared in said action, and by demurrer and answer set up in turn, among other things, its claim to use as it saw fit for the benefit of its citizens and inhabitants and in its sovereign capacity all of the

waters of the state even to the complete exhaustion thereof and the prevention of any of the same escaping into Kansas. Thereafter the State of Kansas, by amended bill, made parties defendant to the said action along with the State of Colorado certain important corporations engaged in the diversion and use of the waters of the Arkansas River for agricultural and manufacturing purposes, namely, the following corporations: The Bessemer Ditch Company, The Oxford Farmers Ditch Company, The Otero Canal Company, The Lake Canal Company, The Riverside Ditch Company, The Catlin Consolidated Canal Company, The Graham Ditch Company, The Lamar Land and Canal Company, The Amity Canal and Reservoir Company, The Rocky Ford Canal, Reservoir, Land, Loan & Trust Company, The Fort Lyon Canal Company, The Colorado Land & Canal Company, The Great Plains Water Company, The Arkansas Valley Sugar Beet and Irrigated Land Company, The Colorado Fuel & Iron Company, and The Bent-Otero Improvement Company. The said companies included most of the largest users of water, particularly for agricultural purposes, from the Arkansas River in Colorado, and the greater number of them appeared, pleaded, and participated in the proceedings. The United States, by leave of court, filed its petition of intervention setting up a claim of national title to and right of control of the waters in non-navigable streams of the western states and thereafter submitted proof and participated in final argument and disposition of the case, but this Honorable Supreme Court held adversely to the United States and confirmed the rights of the States to full jurisdiction over their streams. The said cause coming to issue after various proceedings, and after the recording of vast amounts of testimony at great expense and labor to all the parties, this Honorable Court, in a notable decision and determination, duly made and entered May 13, 1907, duly held, adjudicated and decreed among other things that it had jurisdiction to consider and determine the question of the relative exercise of the sovereignties of the

states of Kansas and Colorado upon the waters of the Arkansas River and its tributaries; that the states could and did in their sovereign capacities and as *parens patriae* of the citizens, inhabitants, and the interests and welfare of their population, represent and speak for the great number of persons and institutions in the respective states using the waters of the said river for beneficial purposes, and that the matters should be determined between the two states as a whole on the basis of their respective benefits in the said stream, their requirements and relative dependence thereon in view of climatic, geographical and other conditions, and the equitable principles governing the asserting of both sovereignties on the water flowing therein. The Court heard and examined the issues which were duly made up and presented to it regarding the whole history of the diversion and use of the said stream for irrigation, domestic, manufacturing and other beneficial uses, considered as part of the cause and litigation the actual past and present diversions and other uses of the stream by all persons and parties under the protection of either state, including the rights, claims and acts of all claimants to water in both states to the date of the close of testimony therein, to wit: on or about May, 1907, and judicially determined that the State of Kansas was not entitled to have the waters of the Arkansas River flow as it was always accustomed to prior to the advent of man into and through the territory now known as the State of Kansas; that there might be on the other hand equitable limitations on the sovereign right of the State of Colorado to wholly exhaust the waters flowing in the channel of the said river so as to prevent any of the quantity whatsoever entering the State of Kansas from the State of Colorado, but that to the date last above mentioned, in respect to which testimony was offered by the two states, the diversions and use of the waters in the State of Colorado did not exceed and had not exceeded the lawful exercise of the sovereignty of Colorado upon the water of the said river under the principles of equity and international

law held applicable to the controversy. The Court therefore dismissed the bill of the State of Kansas against all of the defendants "without prejudice to the right of the plaintiff (the sovereign State of Kansas) to institute new proceedings whenever it shall appear that through a material increase in the depletion of the waters of the Arkansas by Colorado, its corporations or citizens, the substantial interests of Kansas are being injured to the extent of destroying the equitable apportionment of benefits between the two states resulting from the flow of the river." It was thereby duly adjudicated that the quantum of water represented by the appropriations and diversions existing and carried on within the State of Colorado under its authority in the year 1907 was within the lawful rights of the state, its corporations and citizens, and the continuance of such appropriations and diversions was in legal effect quieted to the State of Colorado, its corporations and citizens. The records and proceedings of the said cause are, for brevity by reference, respectfully made a part of this Bill of Complaint, including particularly the decision of the Court reported under the name of *Kansas vs. Colorado*, in 185 United States Reports, 125 and 206 United States Reports, 46.

NINTH

In reliance on said adjudication and determination the State of Colorado and its citizens have continued the diversion and use of the waters of the Arkansas River to the extent that the same existed and were in actual use at the dates included within the issues and testimony in the above mentioned cause. Complainant respectfully submits that no material increase has been made in the depletions of the waters of the river, and that the substantial interests of the State of Kansas have not been detrimentally altered or the equitable apportionment of benefits disturbed since the said date. Such changes, if any, as have occurred are utterly immaterial, and are brought about by the natural alteration in geographical conditions incident to the passage of time only.

and at the date of this complaint the waters flowing into the State of Kansas vastly exceed the quantity to which the State of Kansas for itself, its citizens and inhabitants, is entitled, under any doctrine of equitable apportionment of the benefits of the stream as between states. In reliance on the said adjudication and determination, however, the State of Colorado, without materially altering the quantity of water available within the State of Kansas, by the better governmental regulation and conservation of the water, by the enterprise of various individuals, aided by improvement in the arts and the more settled conditions in Colorado, has not only maintained but materially increased the welfare, happiness and prosperity of its citizens immediately dependent upon the said river and also its citizens at large, and its institutions, settlements, and public and private industries and enterprises throughout the valley have until recently become more permanent, more contented, and more firmly established.

TENTH

The taxable value of lands and property dependent upon the drainage of the Arkansas River has substantially increased since the year 1907, and there have been substantial additions to school, municipal, state, and other governmental or semi-governmental properties, all based upon the proper and lawful reliance of the State of Colorado, its officers, citizens and inhabitants on the adjudication of this Court that until the State of Kansas as accepted spokesman for itself, its citizens and inhabitants, undertakes to invoke the further activity of this Court in the premises, the status quo and the further economic use of the waters in the Arkansas River, in pursuance of the principles laid down in the above mentioned litigation, would prevail, and could be depended upon as the basis of the development and civilization of the Arkansas Valley and Colorado. Relying also upon the doctrine of the foregoing decision to the effect that the relative claims of the two states and the citizens and inhabitants

thereof were fixed and determined forever as between the two states as units and were to be thereafter adjudicated and determined as a whole between the two states, and that the distribution within the two states of the benefits of the said river was and would continue to be a matter of internal administration within the limits of each, the State of Colorado, by the expenditure of great sums, labor and investigation, has extended and improved its machinery and laws for the distribution of water within the State of Colorado, and annually has expended and now continues to expend large sums of public money in developing the whole system as a single unit throughout the river and its tributaries, in the belief that the principles upon which the same were established would be maintained and protected. Since the above mentioned decision the State of Kansas has not invoked or sought to invoke the action of this Court in the premises.

ELEVENTH

In spite of the foregoing adjudication, citizens of the State of Kansas, in defiance of the adjudications above recited, and in defiance of the principles of law above set forth, have, since said decree, commenced, and do continue and now threaten to carry on the litigation of their relative private claims to the waters of the Arkansas River before the District Court of the United States for the District of Colorado. Individual citizens and corporations claiming under the laws of Kansas, asserting ownership of canals and claims to water all of which were fully presented, considered and determined in the above recited litigation between Kansas and Colorado, have continued to litigate with and annoy citizens of the State of Colorado without consulting the interests of either state as a whole, and without making parties thereto or in any way bringing before the courts the State of Kansas or the State of Colorado, and in utter disregard of the adjudication above mentioned and the principles there arrived at. Individual corporations and citizens of Colorado have been

and are now being sued by such citizens of the State of Kansas in the United States District Court for the District of Colorado to enjoin the use of water by said defendants, though such use is authorized, administered and regulated by the State of Colorado, justified by it and claimed by it as a lawful part and derivative of the rights heretofore quieted and adjudicated to Colorado by this Court. Said defendant inhabitants have protested and objected thereto in the United States District Court, have constantly alleged that the matter was one as between the states from which the parties derived their respective rights, that the United States District Court had no jurisdiction in view of the action and determination of this Honorable Court, and that any attempted adjudication of the rights and acts of individual parties was beyond the jurisdiction of the lower courts, and no determination of their respective claims could be arrived at without the participation of the State of Colorado and the State of Kansas as such. The defendants in such cases have also urged what your complainant respectfully submits is the unquestioned fact that, in view of the determinations and actions of this Court, any attempt to adjudicate and put limits upon the rights of individual citizens of the two states could only produce confusion and uncertainty and disorder; that it was impracticable, if the states as a whole were entitled to certain relative benefits, to adjudicate as between the derivative benefits of the citizens thereof without affecting the whole and thereby adjudging the rights and duties of the states in the absence of both; that to permit such litigation was to recognize a right in private citizens of one state to assert and impose a servitude upon the territory and streams of a neighboring state without its consent and to recognize private claims as independent of and superior to the rights of either state; that the Supreme Court had taken and retained jurisdiction over the controversy at the election and request of the sovereign states involved, and no other court had authority or jurisdiction to affect, diminish or dis-

turb the balance of the rights of the said states except this Court, which alone had jurisdiction of the sovereign states involved.

TWELFTH

In spite of such protests by the individuals so sued, represented by motions to dismiss, special answers, and by other proper means, the plaintiffs in said causes have insisted on continuing litigation in the said United States District Court, and the said Court has overruled all protests and has asserted its right to consider and adjudicate such complaints, and the plaintiffs continue to press and now threaten to further press, and will, unless enjoined, further press, and the said court will entertain, their prayers for the adjudication of their rights as between private individuals in both states. The following account of the cases brought by individuals against individuals in Colorado is respectfully presented as showing the history and status of this unlawful and confusing private litigation, to wit:

(a) On or about August 27, 1910, the United States Irrigating Company, a corporation of Kansas (asserting the ownership of two certain irrigation ditches near Garden City, Kansas, the claims, acts and history of which had been fully presented, urged, recited, testified to and adjudicated in the above mentioned litigation in this Honorable Court between the State of Kansas and the State of Colorado), brought suit in the United States District Court for the District of Colorado against The Graham Ditch Company, The Fort Bent Canal Company, The Lamar Canal and Irrigation Company, The Fort Lyon Canal Company, The Oxford Farmers Ditch Company, The Rocky Ford Canal, Reservoir, Land, Loan & Trust Company, The Reorganized Catlin Consolidated Canal Company, The Rocky Ford Ditch Company, The X Y Irrigating Ditch Company, The Manvel Water Company, The Twin Lakes Land & Water Company, The Twin Lakes Reservoir Company, The Canon City, Florence & Pueblo Water Company, The Bessemer Irrigating Ditch Company

The Holbrook Irrigation District, The Otero Irrigation District, The Arkansas Valley Sugar Beet and Irrigated Land Company, and The Colorado Southern Irrigation Company. It alleged in said suit that the plaintiff owned a priority and right of appropriation in Kansas said to have been acquired in 1881 for 250 cubic feet of water per second of time from the Arkansas River for the Great Eastern Ditch, said to have been continuously operated under said priority in said time and amount from that date to the date of suit, and the plaintiff also claimed a priority or right of appropriation initiated in the year 1880 in the amount of 100 cubic feet per second for the South Side Ditch, both ditches being alleged to be in Finney and Kearney counties, Kansas. It sought to have the defendants enjoined from diverting water under their various ditches and structures for irrigating and manufacturing use in the State of Colorado, alleging that the supposed priorities and rights of appropriation of the defendants were junior in time to those of the plaintiff, claiming the right to have said alleged superiority of appropriation enforced without regard to state boundaries or to the policies of the said states, and alleging also that Colorado had exceeded its equitable and relative rights in the flow of the river as determined between the sovereign states of Kansas and Colorado. The plaintiff also joined as parties numerous water officials of the State of Colorado, to wit: the then State Engineer, Division Engineer for Water Division No. 2, and the Water Commissioners of various districts. The court dismissed the bill as to the water officials joined as defendants, over the resistance of the plaintiff but upon the plea of the said governmental officers that suit against them constituted a suit against the State of Colorado in view of the laws, policy and system of the State of Colorado and the ownership of the water of the natural streams by said State. The court permitted the suit to proceed against the other defendants alone, in spite of the fact that it is the settled practice, procedure and law of the State of Colorado that the water officials must

be joined as defendants in any suit affecting relative priorities or the diversion and use of the waters of the streams of the State of Colorado. The plaintiff incidentally, apparently anticipating a plea of laches, pleaded the litigation and conclusion of the case between Kansas and Colorado above described, and thus it appeared in the complaint itself that all of the defendants (except two) had been operating through themselves or their predecessors in interest the same irrigation enterprises and claiming the same rights prior to the litigation between Kansas and Colorado, and that their rights, acts, diversions and history had been fully presented in the case of *Kansas vs. Colorado.* (The two individual defendants excepted above represented new enterprises which were not then completed and have since remained uncompleted, and the said two defendants have no rights to divert water in the State of Colorado, and never have had.) Substantially all the defendants named in the complaint had, either in their own persons or through direct predecessors in interest which then owned the same enterprises and irrigation structures and appropriation rights, been actually named as individual defendants, and impleaded as such by the State of Kansas in the above described litigation in this Honorable Court between the State of Kansas and the State of Colorado. Before the above mentioned cause, however, reached final conclusion but after the expenditure by the individual defendants of large sums of money for the preparation of evidence and the presentation of pleadings and preliminary matters, the said cause was dismissed by the complainant at its own costs. The State of Colorado was not a party to the said cause of action, and would not have consented to the jurisdiction of the United States District Court over itself, nor was the State of Kansas in any respect a party thereto, yet under the pleadings as presented, the Court, over the objection of the defendants, assumed the right to determine the relative rights of the sovereign State of Colorado and the sovereign State of Kansas in the waters of

the Arkansas River. The State of Colorado took no part in the negotiations leading to the settlement of the said cause, but is informed and believes that the individual defendants, despairing of avoiding expensive litigation involving the whole history of the settlement of the Arkansas Valley, bought the dismissal of the case by the payment of a money consideration to said plaintiff.

(b) Thereafter The Finney County Water Users' Association, a corporation of Kansas, (defendant in this present cause before this Honorable Court), on or about November 27, 1916, filed a bill of complaint in equity in the United States District Court for the District of Colorado against the same parties named and recited as defendants above in the suit by the United States Irrigating Company against The Graham Ditch Company and others, the said plaintiff apparently has been encouraged and led thereto by the success of the United States Irrigating Company in maintaining its bill through the preliminary stages in said court and its success in obtaining whatever monetary compensation it received, if any. The rights asserted by said plaintiff had, as in the case last recited, all been pleaded, considered and adjudicated by this Honorable Court in the above mentioned original litigation between Kansas and Colorado. The bill of complaint, except as respects the special allegations affecting the plaintiff's own priority and its own history and position, was substantially a verbatim copy of the bill of complaint filed by the United States Irrigating Company, and contained the same general allegations and stated the same pretended cause of action against the same defendants, alleging, however, that the plaintiff was the owner of the so-called "Farmers Ditch" and alleging that it owned a priority or right of appropriation for 250 cubic feet per second from the Arkansas River, initiated and dating from 1880, as it alleged, which priority had been owned and exercised in that form from that date to the date of the filing of its bill of complaint. By reason of errors in the said bill of complaint in respect to

the defendants alleged and events which had occurred since the filing of the bill which it had blindly copied, such as abandonment of irrigation projects and the reorganization of others, the list of defendants named was modified, after the suit was filed and the defendants now complained of and parties to the said bill are as follows, to wit: The Graham Ditch Company, The Fort Bent Ditch Company, The Lamar Canal and Irrigation Company, The Fort Lyon Canal Company, The Oxford Farmers Ditch Company; The Rocky Ford Canal, Reservoir, Land, Loan & Trust Company, The Reorganized Catlin Consolidated Canal Company, The Rocky Ford Ditch Company, The X Y Irrigating Ditch Company, The Manvel Canal and Irrigation Company, The Twin Lakes Reservoir and Canal Company, The Bessemer Irrigating Ditch Company, The Holbrook Irrigation District, The Otero Irrigation District, and The Arkansas Valley Sugar Beet and Irrigated Land Company. All of the above named defendants are private corporations engaged in the diversion of water for agricultural and domestic purposes at various points in Colorado except the Holbrook Irrigation District and the Otero Irrigation District, which are municipal corporations organized under the laws of the State of Colorado to own and operate structures for the diversion and use principally of irrigating water. All of the said defendants without exception either themselves or through predecessors in interest representing the same irrigation structures, rights and priorities, were included among the individual defendants impleaded by the State of Kansas in the above mentioned litigation in this Honorable Court between the sovereign State of Kansas and the sovereign State of Colorado; and the rights, history, acts and appropriations of the said plaintiff and also of all of the said defendants were involved in, presented, litigated, considered and determined in the course of the above mentioned original litigation between the states of Kansas and Colorado, and the consequences of the acts, diversions and claims of both were fully presented, in-

volved and litigated in the above mentioned controversy wherein the states of Kansas and Colorado in their sovereign capacities appeared for and represented the acts and rights of their citizens as a whole, respectively. Notwithstanding these facts, which fully appear of record in the said cause, and notwithstanding the protest and objections of all of the said defendants against the jurisdiction of the court and the allegations of *res adjudicata* and the contention that the said cause had been determined in the case of *Kansas vs. Colorado,* and was and must be in any case essentially a suit between states, the said objections being presented by motions to dismiss and other pleadings, as well as by answer, the said court has required the said defendants to answer, is about to require the said defendants to present testimony in support of their claims, and has announced its intention to determine the relative rights of the said individuals without the presence of either state or any representative thereof, and to determine what are the limits of the equitable benefits of the sovereign State of Colorado on the Arkansas River as between the State of Kansas and the State of Colorado, all in the absence of either sovereign state. The State of Kansas has not sought or asserted any rights in said court, and the State of Colorado has not thought it consistent with its welfare or dignity to submit itself to the jurisdiction of the said court, or submit to any suit by a corporation of Kansas. The corporation plaintiff therein (named as defendant herein) will, unless prevented by this Honorable Court, proceed to litigate in the said court the rights and claims of this sovereign State of Colorado.

(c) After filing the above mentioned cause and during the pendency thereof the said The Finney County Water Users' Association (defendant in this present cause before this Honorable Court), on or about January 23, 1923, filed a second bill of complaint in equity in the United States District Court for the District of Colorado against The Coler Ditch and Reservoir Company, a corporation of Colorado,

and others, in which cause the said plaintiff named as defendants about 150 citizens and inhabitants and corporations of the State of Colorado alleged to be diverting and appropriating water from the Arkansas River and its tributaries. No reason appears for the selection of the particular defendants sued from among the many thousands of corporations, citizens and inhabitants of Colorado who appear to be equally concerned with those sued in the diversions and use of the waters of the Arkansas River authorized and legitimatized by the laws of the sovereign State of Colorado. Many of the said defendants so sued have no interest in the actual diversion and application to beneficial use of the waters of the stream and, on the other hand, several of the defendants named were made parties defendant also to the above suit and litigation described in (b) above. About 120 of the said defendants have appeared and filed various pleadings in response to the said complaint. Your complainant is unable to determine any system or theory on which the defendants so sued were selected, and the pleadings indicate that the said defendants who have appeared own or have partial or fractional interests in scattered priorities recognized in the State of Colorado for agricultural, domestic, municipal, manufacturing, and other uses, of every variety of date and amount on the Arkansas River and its tributaries from the earliest settlement of the state in the year 1861, and in every decade from that date until recent years. The defendants include the Town of La Veta, a municipal corporation existing under the laws of the sovereign State of Colorado, the Town of Walsenburg, Colorado, a similar municipal agency, and the City of Trinidad, a similar municipal agency, and the Holbrook Irrigation District, a municipal corporation, organized for the ownership and operation of irrigation usufructuary rights and property pursuant to the laws of the State of Colorado, and the Highland Irrigation District, a similar irrigation corporation. A great number of other towns and cities owning and operating appropriations and

facilities for the diversion and use of water from the Arkansas River and its tributaries similar to those sued and both earlier and later in time and greater or less or similar in quantity, and in all respects similarly situated and similarly recognized under the system of governmental distribution of water from the said rivers carried on by the State of Colorado, are not made parties or in any way complained against. There are other municipal irrigation district corporations in the state similar to those named as defendants who are not in any respect impleaded in said cause or complaint. The defendants so selected, like those in the case described in (b) above, are widely scattered geographically, some of them being interested in priorities relatively separated by hundreds of miles of river, prairie and mountain ranges, all of them so located that there are between their points of diversion and the Kansas state boundary numerous persons and corporations not sued or complained of who divert water under every variety of right, senior and junior in time to those sued, and larger and greater in quantity. Most of the defendants sued are interested in priorities separated by hundreds of miles of main and tributary river channels from the State of Kansas and the plaintiff The Finney County Water Users' Association. There are also ditches in Kansas senior in construction to the plaintiff itself and located between it and the Colorado boundary which certainly assert equal or better claims, but which are not made parties, although they claim any water allowed or required to flow into Kansas, and would seize the same. The complaint of the plaintiff (except as respects the allegations which describe the rights and claims of numerous defendants) is a verbatim copy of the complaint filed in the case of The Finney County Water Users' Association and others against The Graham Ditch Company and others described in (b) above, and alleges that the plaintiff asserts the same priority as there alleged to belong to The Farmers Ditch in Kansas, and seeks relief on the same grounds and upon the same allegations. On or

about October 22, 1926 the motions to dismiss filed by the defendants and similar to those filed in the earlier cases were overruled as in the previous cases, and on or about April 1st of the present year the answers of the defendants appearing were completed and filed, the court having, without an opinion but presumably for the reasons expressed in the case described in (b) above, determined to proceed with the adjudication of the supposed relative rights of priority of the private plaintiff and defendants and to determine the present extent of the diversion, uses and needs of the whole State of Colorado and of the whole State of Kansas, and the relation of the use and depletion of the river in Colorado to the equitable rights of the State of Colorado as against the State of Kansas, all without the presence of either state. Unless the said plaintiff made defendant in this Honorable Court is enjoined from the prosecution of the said action, it will, as it threatens, offer testimony, require the defendants to offer testimony, and cause to be adjudicated in the said United States District Court the relative appropriations of the said individual plaintiff and the said isolated and segregated individual defendants, and also the relative rights of the sovereign State of Colorado as a whole in the benefits of the said river as against the sovereign State of Kansas as a whole, the court having announced its determination and duty to do so in the previous opinion based on a bill of complaint identical in all material particulars.

THIRTEENTH

In the case of *The United States Irrigating Company vs. Graham Ditch Company* and others ("a" above), all of the defendants (or their predecessors in the same irrigation properties) had been made defendants in *Kansas vs. Colorado;* all of the usufructuary appropriations of the defendants attacked, and the exercise whereof was sought to be enjoined as being an interference with the claims of the plaintiff, are and were initiated, valid and effective and in full use

under the ordinary doctrine of appropriation long prior in date to the filing of the complaint in *Kansas vs. Colorado* and, of course, also long prior to the date as of which issue was made by the pleadings in *Kansas vs. Colorado* and the date as of which evidence was considered and the adjudication in *Kansas vs. Colorado* was entered. In the case of *Finney County Water Users' Association vs. Graham Ditch Company* ("b" above), the same defendants were named, and the same facts exist in respect to their appropriations, that is to say, their appropriations were made and their diversions began and continued for a long period prior to the date of the filing of the case of *Kansas vs. Colorado,* to the coming to issue by pleadings therein, and to the determination of the issues therein and the adjudication thereof, and each and all of the said appropriations were by the judgment in the case of *Kansas vs. Colorado* duly held and adjudicated to be included within the reasonable exercise of its sovereignty by the State of Colorado. In the case of *Finney County Water Users' Association vs. The Coler Ditch Company* and others ("c" above), the appropriations of the defendants which are attacked in the complaint are of various dates, both prior to the filing of the case of *Kansas vs. Colorado* and afterwards, but the greater part thereof were initiated and in actual use to the same extent as now long prior to the adjudication in the case of *Kansas vs. Colorado.*

FOURTEENTH

Any adjudication entered by the United States District Court under either of the two said pending causes must necessarily take the form, if the plaintiff recovers, of a determination that the plaintiff, being entitled to a priority of some date and in some amount in the State of Kansas, is entitled to assert the same without regard to the sovereign State of Colorado or the sovereign State of Kansas or the systems of distribution and the laws of each against certain individuals in Colorado representing a priority or priorities of some

date or dates and in some amount or amounts, and that plaintiff is entitled to enjoin defendants in Colorado who are scattered as respects time of right, nature of use, quantity of water in use, and as respects geographical location over the whole system of adjudicated rights and priori ies in the State of Colorado. Thus early appropriations whose owners or users happened to be impleaded would be enjoined from the exercise of their rights when junior users who do not happen to have been impleaded will not be bound to recognize the plaintiff's rights although inferior in claim of time to those enjoined under the laws of the State of Colorado. Thus the public ownership and administration in the State of Colorado will be utterly disrupted and destroyed, and the junior appropriators who are not impleaded will claim and be able to maintain as against The Finney County Water Users' Association or any others the right to such water as the defendants who happen to have been impleaded and enjoined may be required by order of court to permit to pass undisturbed by their gates. Thus also, as a consequence, rights to priority late in date although senior in claim because of the character of their use may be enjoined from the exercise of their use at the demand of the plaintiff in Kansas, while rights in Colorado senior in time who do not happen to be impleaded or enjoined will, though junior in claim because of the character of their use, be permitted to intercept and obtain the advantage of said water. Any court decree respecting the use of flowing water between individuals requires active and often discretionary administration, and no court could anticipate recognition or obedience of its adjudications by parties not before it, or by state officials not bound by it, and no court has available the judicial machinery in the way of officers and agents to make any such decree effective without waste of water and great injustice even if it were practicable at all. Your complainant respectfully protests against the insertion into its administrative system of a collateral officer or series of officers, marshals or commis-

sioners appointed by any court. If one decree is entered by one court, similar attempts to adjudicate will inevitably follow in other courts and between other parties, which will almost certainly arrive at different estimates and adjudications of the relative rights of the parties and the relative claims of Kansas and Colorado as a whole. Each of such courts, and each of the courts in each of several separate adjudications, will be free to appoint separate administrative officers to enforce any supposed rights of the Kansas claimants which the court may find. The development of the use of returned waters (that is, waters flowing or percolating back to the stream after irrigation use) is progressing rapidly in all of the western streams, including the Arkansas River, and this and other factors are producing geographical and economic changes from day to day which require the science of water administration to adapt itself constantly to new conditions for the public benefit. The evolution of the Colorado system of administration hereinbefore described is still in process, and any attempt by outside agencies to interfere in the details or lay down such rigid rules as court procedure requires in respect to the daily claims of individual citizens of either state will retard the development of the administrative machinery and perhaps destroy the benefits already obtained. Leaving aside the rights, policy and ownership of the State of Colorado in the waters of the state, the attempt to enforce any such individual recognition of a selected appropriator in Kansas as against a few selected appropriators in Colorado would be destructive of public order, and in many ways and instances not herein outlined would be utterly impossible of intelligent administration or obedience, and would produce the greatest waste and destruction of the water resources claimed by either state. Any adjudication or modification of the rights of a single appropriator or group of appropriators in Colorado necessarily affects, disturbs and interferes with every other appropriator and diverter of water, and disturbs and affects the whole system

of initiation, adjudication and administration of the waters of the State, and no appropriator in Colorado can be individually required to limit diversion or respect the individual rights of an appropriator in Kansas without affecting and substantially destroying the jurisdiction of the State over the administration of the waters of the river, and any such orders would necesarily contradict and interfere with the daily administration of water diversions throughout the Arkansas River, and the operation of the State officials of Colorado in their lawful daily tasks. Any determination of the rights of individual Kansas appropriators against individual Colorado appropriators alone is impossible of performance or intelligent obedience, would necessarily and immediately affect and confuse thousands of irrigation users every one of whose daily claim to water is interlaced and relative to those who might be sued and is varying every day and hour, and any court injunctions as between individuals in Kansas and those in Colorado would instantly collide with state officers of Colorado who are not and cannot be made parties, and would disrupt the administration of this sovereign state.

FIFTEENTH

Your complainant, the State of Colorado, owns and claims for itself as sovereign and also for use in connection with various public institutions, several usufructuary rights to the use of water, and also ditches, canals, and other structures for the diversion and beneficial application of water from the Arkansas River and its tributaries. The rights of the State of Colorado to divert and use water under these various claims and appropriations are, as administered, subordinate in time and priority of right to numerous claims and appropriations of private individuals on the Arkansas River and its tributaries, and are senior in date and prior in use to the claims of other individuals, and are an intrinsic part of the whole administration of the system of relative

usufructuary water rights in effect throughout the Arkansas River and its tributaries, and administered by State officials from hour to hour and from day to day as above set forth. The defendants in the above described pending litigation between a corporation of Kansas and citizens of the State of Colorado are in some cases prior and senior in claim and in some cases later and junior in claim to the usufructuary appropriations and water rights owned by the State of Colorado. The adjudication by any court which does not have jurisdiction of the State of Colorado, its officials and property, that a citizen and appropriator in Kansas as such is entitled to require the cessation and diversion at any time or to any degree by selected citizens of Colorado or within the State of Colorado would necessarily affect the relative position, usefulness and value of the water rights and appropriations held by the sovereign State of Colorado, and if any owners of rights in Colorado were by the order of any subordinate court enjoined from diverting water, they would attempt to insist upon the cessation of diversions under the appropriations and rights held by this State under the application of the whole system of administration, and thereby the State of Colorado in its own property rights on the Arkansas River would be substantially affected, the administration thereof would be confused, the diversions and use of water thereunder would be prevented or hampered, and the said water rights and large investments in State Canals, State Charitable and Penal Institutions, and various other State properties would be diminished, and perhaps destroyed, through the action of such subordinate Federal Courts, which neither have nor are able to obtain authority to act, nor are of sufficient dignity to act upon the sovereign State of Colorado. The following are some of the water rights or usufructuary appropriations from the Arkansas River in which the State of Colorado, in one or another of its sovereign activities, has property rights, and interests in the waters of the Arkansas River, and in each case anything affecting the

said rights affects the whole value and usefulness to this sovereign State of the property so devoted to a public purpose, to wit:

(a) The State of Colorado pursuant to an act passed in 1891 (Session Laws of 1891, p. 352, Sec. 1) has constructed and owns the Monument Reservoir in El Paso County, Colorado, diverting and storing water from Fountain Creek, a principal tributary of the Arkansas River, which is administered as a reservoir having a priority. The waters stored therein are distributed among appropriation owners on the stream below in the discretion of the State Water Officials.

(b) The State of Colorado pursuant to an act of 1891 (Session Laws of 1891, p. 317, Sec. 1) has constructed and owns the Boss Lake Reservoir in Chaffee County, Colorado, diverting and storing water from Cottonwood Creek, Chalk Creek, and the South Arkansas River tributaries of the Arkansas River, which is administered as having a reservoir priority. The waters stored therein are distributed to the appropriators on said streams in the discretion of the State Water Officials.

(c) In connection with the State Penitentiary at Canon City, Colorado, the State of Colorado owns and operates a farm and applies thereon water from the Arkansas River diverted through the "Canon City Hydraulic and Irrigating Ditch", and also uses for agricultural purposes water from the Arkansas River diverted through the municipal diversion system of the City of Canon City; also in connection with the Penitentiary it owns the "Canon Mill Ditch" decreed for power purposes from the Arkansas River, and in various other respects the operation of the said Penitentiary by this sovereign State is dependent upon the water supply from the Arkansas River.

(d) In connection with the State Hospital for the Insane at Pueblo, Colorado, the State of Colorado carries on considerable farming operations for the support and use of

the said institution, diverting water through the "West Pueblo Ditch" under various usufructuary rights assigned to the said ditch on the Arkansas River, with priorities of various dates from 1872 to 1883.

(e) In connection with the State Institution for the Deaf and Blind at Colorado Springs, Colorado, the State irrigates and uses for domestic purposes water diverted from tributaries of the Arkansas River through the diversion system of the City of Colorado Springs under usufructuary rights granted said city.

(f) In connection with the State Reformatory located at Buena Vista, Colorado, the State of Colorado carries on extensive farming operations by irrigation from the Arkansas River and various tributaries, and is the owner of water rights under the Maynard Ditch, the Cotton Creek Irrigation Ditch, the Helena Ditch, and the Gold Nugget Ditch, with various dates of priority, upon the ownership and use of which the conduct of the said institution in its penal, educational and reformatory activities is dependent, and the State likewise operates under lease and has the benefit as lessee of extensive water rights from the Trout Creek Ditch, the Helena Ditch, the Bray Ditch, the Harmony Ditch, the Gold Nugget Ditch, and the Fish Ditch from the Arkansas River and its tributaries, to which are assigned various priorities, of various dates from 1872 to 1882. The said operations under lease as well as those owned in fee are extensive and permanent in character, and a necessary foundation for the governmental activities of the State at said institution.

SIXTEENTH

The sovereign State of Colorado and the Sovereign State of Kansas have for some years past been negotiating and discussing a compact or agreement between the States, to be made pursuant to Article I, Section X, Paragraph 2 of the Constitution of the United States, providing for such agree-

ments, whereby the said States as such would settle permanently and for all time their respective sovereign rights in the waters of the Arkansas River and thereby the rights of all citizens and appropriators within their respective boundaries in regard to the diversion and use of the water of the Arkansas River; and pursuant to statutes passed and renewed by each of the said sovereign States, respectively, a Commissioner for the State of Colorado and a Commissioner for the State of Kansas have been meeting, discussing and drafting such proposed contract and agreement, and referring the terms of the same for consideration to the citizens and officials of both states. Cooperative means for conservation of the waters of the river are recognized by both states as possible and desirable, and there have been negotiations also for flood protection for the benefit of the States of Oklahoma and Arkansas which would involve construction in Colorado of dams for irrigation storage and flood restraint by the aid and partially for the benefit of the lower states. For any such projects the States must be free to deal as units and sovereign powers, with complete internal control of their resources. The pendency of litigation and the possibilities of judgment as between private individuals in the State of Kansas and the State of Colorado in the above mentioned causes have hampered, do hamper, and threaten to render useless, meaningless and nugatory the rights and desires of the said States to settle such matters by compact, and unless prevented by proper authority, the United States Court for the District of Colorado threatens to proceed, and will proceed to enter judgments as between individual parties, which will complicate, embarrass and render wholly or partially ineffective the above mentioned power, duty and opportunity presented by the Constitution of the United States.

SEVENTEENTH

Any private rights which may exist within the State of Kansas are derivative purely from the sovereignty of Kansas

under such policy as it may adopt in regard to the riparian doctrine now in force or such other doctrine as it may from time to time in the future develop, and any and all such rights within the State of Kansas are, as in the case of Colorado, to be allocated to such quantum of water or use as the State of Kansas may be entitled to by compact between the states or by equitable principles adjudicated by this Court in a proper proceeding. Colorado and Kansas should both be free, by virtue of their inherent sovereignty which they have surrendered neither to the Federal government nor any other power, to adapt their domestic policy by such present or altered legal doctrines or present or altered administrative machinery as the problems of developing population, changing geographical conditions and other considerations may dictate. Relying upon the determination of this Court in the above mentioned litigation between Kansas and Colorado, Colorado has made great progress in the economic application, scientific use and development of its waters, and even greater progress in the development of administrative machinery for the conservation and wise distribution of the quantum of water which it is entitled to divert from the Arkansas River. Notwithstanding the solemn determination therein entered into, citizens of the State of Kansas, by their action have placed the State of Kansas in the position of acquiescing in private litigation in which it has nothing to lose and everything to gain, the result whereof might be to set aside the effects of the said determination between the states of Kansas and Colorado and thereby to place Kansas in the position of gaining by guerrilla warfare what it is forbidden to assert openly and officially as a sovereignty, and to enable its citizens, by a favorable decision in the lower Federal courts, to lay a perpetual servitude on territory of the State of Colorado to be thereafter maintained and perpetuated without the consent of Colorado, without consideration of her dignity as a sovereign state, in total disregard of her domestic policy and system of administration, and in defi-

ance of the solemn adjudication made in the case of Kansas against Colorado in 1907. If the State of Kansas has complaints against the State of Colorado because of diversions within the State of Colorado, or the interpretation given to said adjudication by the State of Colorado, she is bound, by her election and by the express reservation of jurisdiction made by this Court in the case of Kansas against Colorado, to submit any and all such complaints to this Court and this Court only.

EIGHTEENTH

The private litigation above mentioned is being maintained and pressed in pursuance to rulings of the United States District Court in and for Colorado and the Judge thereof, and the said court will, unless prevented by this Supreme Court, proceed to hear and adjudicate the matters presented to it in the manner and on the principles prayed. The said litigation has already annoyed and harrassed and caused an expense of more than one-quarter of a million dollars to the defendant individual appropriators and users of water of the Arkansas River whose rights are derivative from and wholly dependent upon and included within the authority of the State of Colorado, and who are entitled to the fruits and benefits and the law of the case as laid down in the adjudication of Kansas against Colorado, and the defendant individuals sued have been impoverished and are now practically helpless to sustain the burden of the whole state in purely private litigation. No appeal lies as of right to this Honorable Supreme Court, as your complainant is advised, from any such litigation between private individuals, and thus the whole sovereignty of the State of Colorado in respect to the use of the waters of the Arkansas River is threatened to be adjudicated and determined by subordinate tribunals without recourse to this Honorable Court, the only tribunal rightfully empowered to determine the same. The individual defendants have exhausted their remedies before the said lower courts, and the said litigation has, by reason of the numbers

of parties involved and the extent of the issues, become a state-wide calamity, especially and vitally affecting the whole prosperity and development of cities, towns and agricultural districts constituting approximately a fourth of the area of the State of Colorado.

NINETEENTH

The ultimate prayer, object and, if successful, the effect of the continuance of the said private litigation brought by said corporation in Kansas against individuals in Colorado will be, if permitted to continue,

(a) To allow a local Federal Court to usurp the functions of this Supreme Court, to assume jurisdiction between States and of political matters, to adjudicate on the policy and sovereign rights of the State of Colorado and to entertain a suit in effect against it contrary to the Eleventh Amendment.

(b) To impose on the State of Colorado without its consent what amounts in practice to a perpetual servitude on behalf of the State of Kansas and its citizens and to enforce such foreign servitude on the territory of Colorado without authority of interstate compact or decision of this Honorable Court.

(c) To remove forcibly and forever from the sovereign State of Colorado the public ownership, control and administration of all diversions of water from the Arkansas River in Colorado to the gain of Kansas and her citizens, without the consent of the State of Colorado, in complete disregard and indifference to her constitution and laws and in defiance of her inherent rights as a sovereign State; and through the instrumentality of bailiffs or other officers appointed by the Federal District Court and responsive to the will of that court and not to the law of either State, to supersede the state executive and administrative officers and to take over the administration of diversions from the stream and its tributaries in

perpetuity, immune from state control and utterly indifferent to the will of the State and to her changing necessities.

(d) To destroy the principles and practice of local government and local administrative units, long ago woven into the fabric of American traditions and particularly suited to the conservation, use and economic application of flowing water in an arid region.

(e) To repudiate the quantum allocation of water adjudicated to Colorado in the case of *Kansas vs. Colorado* and deprive your complainant of all the peace and security which was the fruit of said cause and which should be the end of every litigation.

(f) To determine as between an inhabitant of the State of Kansas and a few inhabitants of the State of Colorado some supposed relative private usufructuary interests presumably deraigned from the State of Kansas in the waters of the Arkansas River within Colorado without either of said sovereign states being brought before any court to adjudicate the same and without either being represented or bound in the said litigation.

(g) To enjoin and overturn the long established rights and long-continued activities of Colorado defendants, which rights, activities and operations were considered by this Supreme Court in the case of *Kansas vs. Colorado* and there adjudicated to be lawful, proper, and within the limits of the authority and sovereignty of the State of Colorado, and thereby to ignore, set aside and destroy the benefits of the people of Colorado acquired by virtue of the long, expensive and laborious litigation in the case of *Kansas vs. Colorado.*

(h) To require the administrative officers of the State of Colorado concerned with the administration and supervision of water rights and diversions from the Arkansas River either (in the alternative) to refuse recognition to orders and decrees which affect the whole of the administration of the

river, though binding on only a few individuals (on the ground that the State and said officials are not parties thereto nor bound thereto, that such decrees are contrary to the policy of the State, are not contemplated by the statutes under which they operate, and are destructive of the whole system, including the rights of numerous individual parties not impleaded in the said private litigation), or else to abandon the whole system of water distribution on the Arkansas River.

(i) To announce and determine supposed relative individual usufructuary relations between water users in two states which have wholly different laws and water systems, Kansas asserting the riparian system and Colorado the appropriation doctrine.

(j) To establish, through the judicial department, a new interstate government, unknown to the Constitution, and thereby to administer without regard to the sovereign states involved, property rights created by each, properly controlled by them separately and respectively, and which are derivative from, and should be adjudicated and administered only as claims upon the fund or quantum of the water from the Arkansas River available to each State as a whole.

(k) To impose within Colorado, as the only effective means of enforcing decrees entered in any private litigation, a body of Federal marshals, commissioners or masters, or the marshals, commissioners or masters of other courts having jurisdiction of the particular persons involved, which body will usurp the functions of the state administrative officers, interfere with them and dislocate the orderly system of administration now developed and hereafter to be improved, all with the consequent results of waste of water, lack of proper supervision of conservation and economic principles, public disorder and the practical destruction of the sovereignty and jurisdiction of your complainant.

(l) To throw upon individual appropriators in Colo-

rado the burden of defending and litigating the claims of the whole State in respect to said river when they are without means, facilities or authority so to do, and thus to impoverish them.

(m) To embarass, hamper, and render nugatory the right and duty of the State of Colorado and the State of Kansas to settle, by compact between them, the relative rights of the said States and their citizens and the other appropriators and users of water within their respective boundaries, pursuant to Article I, Section X, Paragraph 2 of the Constitution of the United States, and thereby to render illusory, ineffective and nil the right, duty and desire of the said States as above set forth, to negotiate and settle any existing differences between them in the manner provided by the Constitution.

(n) To confirm in the lower Federal courts in the District of Colorado jurisdiction to consider and determine in a suit to which the State is not a party, the rights of the State of Colorado which are inherent in its sovereignty and are actually exercised and administered by its sovereignty, though such assumption of jurisdiction is in defiance of the provisions of the Constitution of the United States whereby the State of Colorado in its sovereign capacity can be impleaded only in the Supreme Court of the United States, the rights and dignity of which position the State of Colorado has never waived nor abandoned in any respect.

(o) To confuse and intermingle forever the respective jurisdictions of the State and Federal governments and also of the judicial and executive branches of both governments, and as a result thereof to hamper and perhaps destroy the orderly evolution of agriculture, industry, and human population in the Arkansas Valley.

TWENTIETH

Your complainant, the State of Colorado, offers to do

full equity to the State of Kansas in respect to the administration and use of the waters of the Arkansas River whenever called upon so to do and whenever the State of Kansas in this tribunal reopens or prays to reopen the matters involved as between the states within the permission given and the jurisdiction reserved by this Court in the case of *Kansas vs. Colorado*, but this complainant submits that no other court than this has, upon the general doctrines of law, or the Constitution of the United States or under the specific adjudication arrived at and the principles laid down as the law of the case in the case of *Kansas vs. Colorado*, any authority or jurisdiction whatsoever to adjudicate upon the relative rights of Colorado and its citizens and appropriators and of the State of Kansas, its citizens and water users.

TWENTY-FIRST

Your complainant has no adequate remedy at law, or any remedy at law, nor any remedy in any court whatsoever except this Supreme Court of the United States, in respect to the matters herein set forth.

WHEREFORE, the State of Colorado prays that this Honorable Court may cause its subpoena or other proper process to issue under the seal of this Court, summoning the sovereign State of Kansas and The Finney County Water Users' Association each as defendants to appear herein, present their answers, if any, and abide by the determination of this Court; that this Honorable Court may temporarily during the pendency of this cause and permanently upon the termination hereof prohibit and enjoin the defendant corporation The Finney County Water Users' Association from the further prosecution and carrying on of all and any of the litigation between individuals in the United States District Court for Colorado hereinbefore described and named or any other suits or causes on the same or similar claims; that this Honorable Court may enjoin the State of Kansas and its other citizens or inhabitants from litigating the relative

rights of the two states and their citizens to the waters of the Arkansas River except by proper proceedings in this Honorable Court, and that this Honorable Court may reserve to itself sole jurisdiction and protect itself in its sole jurisdiction over the determination of the use of the waters of the Arkansas River as between the States of Colorado and Kansas, may protect and quiet the rights of the State of Colorado, its officers, citizens, corporations, and its inhabitants under the adjudication in *Kansas vs. Colorado,* and may give such other, further and different relief as may be just and equitable.

THE STATE OF COLORADO,

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